of the presumption the defendant must satisfy the jury by the clear preponderance of proof that he is insane. *Graves* v. *State* (1883) 45 N. J. L. 347. Others hold that a simple preponderance of the evidence is sufficient. *Keener* v. *State* (1895) 97 Ga. 388, 24 S. E. 28. Both seem wrong. There is a line of cases in support of the better rule, that the state must prove beyond a reasonable doubt that the defendant was sane. *Davis* v. *United States, supra*; *Walker* v. *People* (1882) 88 N. Y. 81. Insanity is not soundly an affirmative defense, because by denying the criminal intent it denies the crime. The defendant having raised the issue, the state must prove sanity, as it does the physical act in the crime, beyond a reasonable doubt. If the jury is uncertain, the defendant should be acquitted. This rule does not encourage insanity as a sham defense. The usual scepticism of the jury in regard to such a frequently interposed defense, takes care of that.

GIFTS—*Inter Vivos* AND *Causa Mortis*—TESTAMENTARY INSTRUMENT.—The deceased, about to undergo an operation for cancer, executed and delivered to the defendant an instrument, in form a quit-claim deed, of all her real and personal property. The instrument was to take effect only upon her death and provided the donee survived her. As shown in the report of the case at the Trial Term (114 Misc. 483, 186 N. Y. Supp. 712) the deceased apparently recovered from the operation, but died four years later from cancer, following a second operation. In an action by the heir at law, *held,* the instrument did not pass title. *Butler* v. *Sherwood* (3d Dept. 1921) 196 App. Div. 603, 188 N. Y. Supp. 242.

The instrument was not a valid deed since it was revocable and to act *in futuro*. Similarly, there was no executed gift *inter vivos*. *Wertheimer* v. *Baum* (1908) 59 Misc. 527, 11 N. Y. Supp. 18. The instrument rather was testamentary in character, *Knight* v. *Tripp* (1898) 121 Cal. 674, 54 Pac. 267; *In re Belcher's Will* (1872) 66 N. C. 51; but invalid as a will since there had been no compliance with statutory requirements for wills. Gifts executed prior to a serious operation may be upheld as *causa mortis*. *Ridden* v. *Thrall* (1891) 125 N. Y. 572, 26 N. E. 627. But such a gift is complete upon delivery, though revocable by the donor's recovery. See *Ridden* v. *Thrall, supra,* 579. So even if there had been an unconditional delivery, the recovery of the donor would operate as a revocation, even though she later died due to the same disease. *Weston* v. *Hight* (1840) 17 Me. 287. Therefore, from whichever angle viewed, the proper result was reached. The court, however, seems partially to base its decision as to the invalidity of the gift on different and questionable grounds, *viz.,* that there was not such a delivery as could pass title *inter vivos* to chattels. It seems well settled, in most jurisdictions, that a constructive or symbolic delivery is sufficient. See *Beaver* v. *Beaver* (1889) 117 N. Y. 421, 428-429, 22 N. E. 940. However, in some jurisdictions symbolic delivery is valid only where actual physical delivery is impossible. *Cf. Cronin* v. *Chelsea Bank* (1909) 201 Mass. 146, 87 N. E. 484. In New York, the delivery of the instrument of gift constitutes a valid delivery. *Hawkins* v. *Union Trust Co.* (1919) 187 App. Div. 472, 175 N. Y. Supp. 694; *Matter of Cohn* (1919) 187 App. Div. 392, 176 N. Y. Supp. 492; see (1920) 20 COLUMBIA LAW REV. 196. Thus, though the court reaches the correct result, it is aided in so doing by one faulty premise.

MANDAMUS—PUBLIC SCHOOL AUTHORITIES—ADMINISTRATIVE LAW.—The plaintiff satisfactorily completed her high school course of study, but was denied a diploma because she refused to wear a recently fumigated gown at the graduation ceremony. In mandamus proceedings to compel the issue of the diploma, *held,* for the petitioner. *Valentine* v. *Independent School Dist. of Casey* (Iowa 1921) 183 N. W. 434.

The defendants in the instant case were authorized by statute to prevent

graduation of pupils for violation of school rules. Iowa Comp. Code (1919) § 2566. Public school authorities have such control even in the absence of a statute, but if the ruling is unreasonable or arbitrary a court will take jurisdiction by a writ of mandamus. *State, ex rel. Kelley* v. *Ferguson* (1914) 95 Neb. 63, 144 N. W. 1039. A writ of mandamus issues to compel the performance of a ministerial duty not involving the exercise of discretion. *People* v. *Board of Supervisors of DeWitt County* (1911) 161 Ill. App. 529 (*semble*). The petitioner must show a clear legal right to the thing demanded and an imperative duty of the respondent to perform. *State, ex rel. Hunter* v. *Winterrowd* (1910) 174 Ind. 592, 92 N. E. 650. Thus the writ will not be issued where the defendant has acted within the limits of reasonable discretion. *The State, ex rel. The City of Dayton* v. *Patterson* (1915) 93 Ohio St. 25, 112 N. E. 142. Nor will it issue where there is another adequate remedy. *Chatfield Co.* v. *Reeves* (1913) 87 Conn. 63, 86 Atl. 750. Mandamus has been allowed to compel a private school to issue a diploma. *State, ex rel. Nelson* v. *Lincoln Medical College* (1908) 81 Neb. 533, 118 N. W. 122. But this seems unsound since a bill for specific performance would lie, and mandamus is generally regarded as the most extraordinary legal remedy. *State, ex rel. Burg* v. *Milwaukee Med. College* (1906) 128 Wis. 7, 106 N. W. 116. Since the defendants' ruling was clearly unreasonable and mandamus the only remedy, the instant case is sound.

MASTER AND SERVANT—SERVANT'S WILFUL TORT—MASTER'S LIABILITY IN EXEMPLARY DAMAGES.—The plaintiff, a passenger of the defendant railroad company was wilfully assaulted by one of its employees. *Held,* the defendant is liable in exemplary damages. *Clark* v. *Bland et al.* (N. C. 1921) 106 S. E. 491.

A carrier contracts to carry passengers safely and is bound to protect them against violence from its servants. *Birmingham Ry. etc.* v. *Baird* (1900) 130 Ala. 334, 30 So. 456. But assuming the carrier is liable to the plaintiff, should it be responsible in exemplary damages? Such damages are awarded as punishment against a wrongdoer. *Dreimuller* v. *Rogow* (1919) 93 N. J. L. 1, 107 Atl. 144; see *The Amiable Nancy* (U. S. 1818) 3 Wheat. 546, 558. The better authority holds the master liable for punitive damages only if he directs or ratifies his servant's act. *Lake Shore Ry. Co.* v. *Prentice* (1893) 147 U. S. 101, 13 Sup. Ct. 261; *Rainess* v. *American League Baseball Club* (1921) 185 N. Y. Supp. 582; *contra, Rucker* v. *Smoke* (1892) 37 S. C. 377, 16 S. E. 40. A third view distinguishes between corporate and individual masters and holds the former liable for punitive damages on the theory that the corporation is personified in each of its agents. See *Jones* v. *Shannon* (1918) 55 Mont. 225, 233, 175 Pac. 882. By the sounder view the corporation is personified only in its superior officials. See *Sparrow* v. *Vermont Savings Bank* (Vt. 1921) 112 Atl. 205 . Hence, only where such officials directly order the tort complained of, is the company correctly held liable in exemplary damages. *Sparrow* v. *Bank, supra, (semble).* But exemplary damages being awarded as punishment of a wrongdoer, the master should not be responsible in such damages even where the servant acts within the scope of his employment, if the master has not ordered or ratified the act. *A fortiori,* where the act is not in the master's interest. The federal and New York cases seem the sounder and the instant case represents the less easily sustainable doctrine.

MUNICIPAL CORPORATIONS—UNSAFE CONDITION OF STREETS—INDEPENDENT CONTRACTOR.—An independent contractor, employed by the defendant city, negligently tarred its streets, making them unsafe. Five hours afterward the plaintiff was injured due to the skidding of his automobile. He received a verdict. Upon appeal, *held,* two judges dissenting, a new trial ordered. The defendant is not